

# Law Office of Jack Silver

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***Via Certified Mail –  
Return Receipt Requested***

November 9, 2020

Melissa Morton, District Manager  
Board of Trustees  
Vallejo Flood & Wastewater District  
450 Ryder Street  
Vallejo, CA 94590

Johnson Ho, Director of Operations and Facilities Maintenance  
Head of Agency  
Vallejo Flood & Wastewater District  
450 Ryder Street  
Vallejo, CA 94590

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution  
Control Act (Clean Water Act)**

Dear Ms. Morton, Members of the Board, Mr. Ho, and Head of Agency:

**STATUTORY NOTICE**

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and operation of Vallejo Flood and Wastewater District's (formerly Vallejo Sanitation and Flood Control District) Wastewater Treatment Plant ("Facility") and associated sewer collection system.

River Watch hereby places Vallejo Flood and Wastewater District ("District"), as owner and operator of the Facility and associated sewer collection system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the District for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board San Francisco Bay Region, ("SF-RWQCB") Water Quality Control Plan ("Basin Plan"), as the result of violations of the District's National Pollutant Discharge Elimination System ("NPDES") Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, which has been issued a permit

pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in an NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition such that violation of a permit limit places a discharger in violation of the CWA. River Watch alleges the District is in violation of the CWA by violating the terms of its NPDES Permit.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency (“EPA”) to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board (“SWRCB”) and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the District’s operations in the region at issue in this Notice is the SF-RWQCB.

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the District with the CWA.

## **NOTICE REQUIREMENTS**

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

### **1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated**

The order violated is SF-RWQCB Order No. R2-2017-0035, NPDES CA0037699, *Waste Discharge Requirements for The Vallejo Flood and Wastewater District Wastewater Treatment Plant and its Wastewater Collection System* (“NPDES Permit”). River Watch has identified specific violations of the District’s NPDES Permit including raw sewage discharges and failure by the District to either comply with or provide evidence that it has complied with all the terms of its NPDES Permit. Such discharges of sewage from the District’s sewer collection system to waters of the United States, without an NPDES permit, are also in violation of CWA § 301(a), 33 U.S.C. § 1311(a), which states in part: “Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful.”

### **2. The Activity Alleged to Constitute a Violation**

River Watch contends the District has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

A. **Sanitary Sewer Overflows, Inadequate Reporting, and Failure to Mitigate Impacts**

i. **Sewer Collection System Surface Discharges Caused by Sanitary Sewer Overflows**

Sanitary Sewer Overflows (“SSOs”), in which untreated sewage is discharged above ground from the sewer collection system prior to reaching the Facility are alleged to have occurred both on the dates identified in California Integrated Water Quality System (“CIWQS”) Interactive Public SSO Reports, and on the dates when no reports were filed by the District, all in violation of the CWA.

The District’s sewer collection system receives high flows during the rainy season, as a result of stormwater inflow and/or groundwater infiltration (I/I) into the sewer collection system from leaky sewer pipes and its failure to eliminate illegal connections of down spouts or yard drains. The sewer collection system currently has insufficient capacity to handle peak wet weather flows. During heavy storms, the sewer collection system became surcharged (pressurized due to higher than normal flows) and untreated sewage diluted with groundwater and stormwater overflow at various locations and eventually drain to surface waters including tributaries of Mare Island Strait, Carquinez Strait, White Slough, Austin Creek, the Napa River and San Pablo Bay. Some possible effect on water quality and beneficial uses as a result of SSOs include:

- Adverse impact to fish and aquatic biota caused by solid depositions, oil and grease, and toxic pollutants common in sewage (such as heavy metals, pesticides, personal care products, and pharmaceuticals),
- Creation of a localized toxic environment in the water column as a result of the discharge of oxygen-demanding pollutants that lower dissolved oxygen,
- Elevated ammonia concentration which is a demonstrated fish toxicant,
- Impairment of water contact recreation and non-contact water recreation as a result of elevated bacterial levels including pathogens.

A review of the CIWQS Spill Public Report – Summary Page identifies the “Total Number of SSO locations” as **326**, with **2,095,503** “Total Vol. of SSOs (gal)” discharged into the environment. Of this total volume, the District admits at least **1,993,839** gallons, or **95%** of the total reached a surface water. A review of the District’s records indicates an even greater percentage of SSOs reached a drainage to a surface water or a surface water itself. Of the **2,095,503** gallons of sewage spilled, only **85,714 gallons** (**4%** of the total was reported as being recovered (see “District CIWQS Spill Report - Summary Page.”). The remaining volume was discharged into the environment posing both a nuisance pursuant to California Water Code § 13050(m) and an imminent and substantial endangerment to public health and the environment.

A review of the CIWQS SSO Public Report - Detail Page specifically identifies at least **95%** of recent SSOs reported as having reached a water of the United States (see “Vallejo Flood & Wastewater District CIWQS Public Report - Detail page”) which includes the Event ID #s 863996,

863926, 856920, 856337, 856259, 855350, 853050, 845456, 842787, 831749, 831747, 830950, 830243, 826342, 824603, 821918.

All of the above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as discharges of a pollutant (sewage) from a point source (sewer collection system) to a water of the United States without complying with any other sections of the District's NPDES Permit, which states in Section III. Discharge Prohibitions:

A. Discharge of treated wastewater at a location or in a manner different than described in this Order is prohibited.

E. Any sanitary sewer overflow that results in a discharge of untreated or partially-treated wastewater to waters of the United States is prohibited.

ii. Inadequate Reporting of Discharges

a. Incomplete and Inaccurate SSO Reporting

Full and complete reporting of SSOs is essential to gauging their impact to public health and the environment. The District's SSO Reports, which should reveal critical details about each of these SSOs, lack responses to specific questions that would identify the causes and the potential repairs ensuring these violations would not recur.

In addition, River Watch's expert believes many of the SSOs reported by the District as partially reaching a surface water did so in greater volume than stated. River Watch's expert also believes that a careful reading of the time when the District received notification of an SSO, the time of its response, and the time at which the SSO ended, too often appear as unlikely estimations. For example:

January 14, 2019 (Event ID #855350) - The spill start time is reported as 14:20 and the agency notification time five minutes later at 14:25. The operator arrival time is reported as 15:22 and the spill end time as just one minute later at 15:23. The spill, caused by a gravity mainline failure, is reported to have discharged an estimated 2,950 gallons into White Slough where it was able to flow into the Napa River.

January 01, 2017 (Event ID #831749) - The spill start time, agency notification time, and operator arrival are all reported as 20:20. The spill end time is reported as 21:42. The cause of the spill is listed as gravity mainline failure. The total volume of the spill, 6,150 gallons, are reported as having reached the Napa River.

November 11, 2016 (Event ID #830243) - The spill start time and agency notification are both reported as 12:45, and the operator arrival time as fifteen minutes later at 13:00. The spill end time is reported as a little more than an hour later at 14:15. The spill volume is reported as approximately 2,250 gallons. Of that amount, 1,750 gallons were discharged into White Slough.

Given the unlikely accuracy of the times, intervals and spill volumes provided in these reports, it is difficult to consider the stated volumes as accurate. Without accurately reporting the spill start and end time, there is a danger that the duration and volume of a spill will be underestimated.

b. Failure to Warn

The District's NPDES Permit Attachment G - Regional Standard Provisions, and Monitoring and Reporting Requirements (Supplement to Attachment D), Section I "Standard Provisions - Permit Compliance", Subsection I.2. states:

"Collection, treatment, storage, and disposal systems shall be operated in a manner that precludes public contact with wastewater. If public contact with wastewater could reasonably occur on public property, warning signs shall be posted."

River Watch alleges the District is understating the significance of the impacts of its CWA violations by failing to post health warning signs for discharges reaching a surface water. For example, despite the obvious risk to health, the District did not post any warning signs to warn the public of the large spills detailed in Attachment B, identified as Exhibit ID #s 863996, 863926, 856920, 856337, 856259, 855350, 853050, 845456, 842787, 831749, 831747, 830950, 830243, 826342, 824603, 821918.

iii. Failure to Mitigate Impacts

The District's NPDES Permit Attachment D - Standard Provisions, Section I. Standard Provisions - Permit Compliance, Subsection C. Duty to Mitigate, States:

"The District shall take all reasonable steps to minimize or prevent any discharge in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment. (40 C.F.R. § 122.41(d).)"

River Watch contends the District fails to adequately mitigate the impacts of its SSOs. The District is a permittee under the *Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements*, Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR requires the District to take all feasible steps, and perform necessary remedial actions following the occurrence of an SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the sewer collection system to prevent further SSOs at the site.

A critical remedial measure is the performance of adequate sampling to determine the nature and the impact of the release. As the District is underestimating SSOs which reach surface waters, River Watch contends the District is not conducting sampling on most SSOs.

The EPA's "*Report to Congress on the Impacts and Control of CSOs and SSOs*" (EPA, Office of Water (2004)), identifies SSOs as a major source of microbial pathogens and oxygen depleting

substances. Numerous critical habitat areas exist within areas of the District's SSOs. Neighboring waterways include sensitive areas for the Short-tailed albatross, Tidewater Goby, California tiger Salamander, Alameda whipsnake, Southern sea otter, Marbled murrelet, California least tern, Olive ridley sea turtle, California clapper rail, Delta smelt, longfin smelt, Salt marsh harvest mouse, Leatherback sea turtle, and San Francisco garter snake.

River Watch finds no record of the District performing any analysis of the impact of its SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore waterbodies designated as critical habitat from the impacts of SSOs.

#### **B. Sewer Collection System Subsurface Discharges**

It is a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a sewer collection system result in discharges to adjacent surface waters via underground hydrological connections. River Watch alleges untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., in the District's sewer collection system into groundwater hydrologically connected to surface waters including, but not limited to, tributaries of Mare Island Strait, Carquinez Strait, White Slough, Austin Creek, the Napa River and San Pablo Bay - all waters of the United States. Surface waters become contaminated with pollutants including human pathogens. Chronic failures in the sewer collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other sewer collection systems have verified the contamination of adjacent waters with untreated sewage. Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data and video inspection, as well as testing of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found is a violation of the District's NPDES Permit and thus the CWA.

#### **C. Violations of Effluent Limitations and Monitoring Requirements**

A review of the District's Self-Monitoring Reports ("SMRs") identifies the following two (2) violations of effluent limitations under the District's NPDES Permit Section IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations, Table 4. Effluent Limitations:

(12/15/16) Chlorine, Total Residual Instantaneous Maximum limit is 0.0 mg/L and reported value was 0.24 mg/L at E-001. (Event ID# 1018143)

(01/10/17) Chlorine, Total Residual Instantaneous Maximum limit is 0.0 mg/L and reported value was 1.41 mg/L at E-001. (Event ID # 1021334)<sup>1</sup>.

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<sup>1</sup> These identified violations are covered under Administrative Civil Liability Order No. R2-2017-1038 issued to the District on November 27, 2017.

#### **D. Violations of Receiving Water Limitations and Impacts to Beneficial Uses**

River Watch is understandably concerned as to the effects of both surface and underground SSOs on critical habitat in and around the diverse and sensitive ecosystem of the Facility and the District's SSOs. Beneficial uses of Mare Island Strait, Carquinez Strait, White Slough, Austin Creek, the Napa River, San Pablo Bay includes industrial service supply, commercial and sport fishing, shellfish harvesting, estuarine habitat, fish migration, preservation of rare and endangered species, fish spawning, wildlife habitat, water contact recreation, non-contact water recreation, and navigation.

Discharges in excess of receiving water and underground limitations reaching these waters cause prohibited pollution by unreasonably affecting their beneficial uses. In order to protect these beneficial uses, the District is required by its NPDES Permit to ensure that discharges shall not cause the listed fourteen (14) limitations to be exceeded (Section V. Receiving Water Limitations). River Watch finds insufficient information in the public record demonstrating the District has monitored for and complied with these receiving water standards.

The **Carquinez Strait** is a narrow tidal strait of 8 miles, included in the tidal estuary of the Sacramento and the San Joaquin Rivers as they drain into San Francisco Bay. It connects Suisun Bay with San Pablo Bay. This navigable channel, part of the Baldwin Deepwater Shipping Channel, is used for commercial and military shipping. The Carquinez Strait is listed under CWA § 303(d) impaired for chlordane, DDT, dieldrin, dioxin compounds (including 2,3,7,8-TCDD), furan compounds, invasive species, mercury, PCB's, and selenium.

The **Mare Island Strait**, a tributary of the Carquinez Strait, is a channel in San Pablo Bay which separates Mare Island and Vallejo on the mainland. The Mare Island Strait is used for both recreational and freight boating, providing deep-water access to the Suisun Bay Channel and the ports of Sacramento and Stockton.

The **San Joaquin River**, some 366 miles long, starts in the high Sierra Nevada and flows through San Joaquin Valley before reaching the Suisun Bay and San Francisco Bay. The River is an important wildlife corridor, providing a critical resting and breeding stop for migratory birds along the Pacific Flyway in its marshes and wetlands. As defined by the World Wildlife Fund, the San Joaquin River watershed is part of the Sacramento-San Joaquin freshwater eco-region, which supports almost 40 species of freshwater fish including sturgeon, perch, sunfish, lampreys, salmon, and steelhead. **White Slough** is a tributary to the San Joaquin River. The Sacramento-San Joaquin Delta is listed under CWA § 303(d) as impaired for chlordane, DDT, dieldrin, dioxin compounds (including 2,3,7,8-TCDD), furan compounds, invasive species, mercury, PCB's, and selenium.

The **Napa River** travels approximately 55 miles from Mount St. Helena to San Pablo Bay and drains 426 square miles. The River has 47 tributaries including **Austin Creek**. Its headwaters are

in northwestern Napa County just south of the summit of Mt. St Helena in the Mayacamas Mountains. The last 17 miles of the River are an estuary system flowing from the Trancas Street bridge in Napa to Vallejo. The mouth of the River is in Vallejo where the intertidal zone of fresh and salt water flow into the Carquinez Strait and San Pablo Bay. The River supports a large diversity of fish including recovering salmonid populations such as the endangered Chinook Salmon and steelhead trout which spawn in the River and its many tributaries. The Napa River Basin continues to support a community of native fish species including steelhead, Pacific river lamprey, hardhead, hitch, tule, and perch, as well as bluegill, black and striped bass, sturgeon, endangered split tail, yellowfin goby and silversides. Because of this diversity, the Napa River has been prioritized for special protection. Birds making their home along the Napa River including mallards, green-winged teals, mergansers, wood ducks, herons, egrets, kingfishers, rails, grebes and the endangered Clapper Rail. The Napa River is listed under CWA § 303(d) as impaired for nutrients, pathogens and sedimentation/siltation.

**San Pablo Bay** is a tidal estuary that forms the northern extension of San Francisco Bay in the East Bay and North Bay regions of the San Francisco Bay Area, connecting to the Pacific Ocean via San Francisco Bay on its southern end. San Pablo Bay consists of multiple undeveloped shore lands with salt marshes and mudflats. It is a primary wintering stop for the canvasback duck population on the Pacific Flyway, as well as a migratory staging ground for numerous other species of waterfowl. Much of its northern shore is protected as part of the San Pablo Bay National Wildlife Refuge. Endangered species making their home in the Refuge include the California brown pelican, California clapper rail, and salt marsh harvest mouse. San Pablo Bay is listed under CWA § 303(d) as impaired for chlordane, DDT, dieldrin, dioxin compounds (including 2,3,7,8-TCDD), furan compounds, invasive species, mercury, PCB's, PCB's (dioxin-like), and selenium.

**San Francisco Bay** is the largest estuary on the west coast draining water from approximately 40 percent of California. San Francisco Bay and the Sacramento-San Joaquin River Delta remain perhaps California's most important ecological habitats. The Bay provides unparalleled marshes and mudflats providing food and shelter to over 1,000 species of fish and wildlife including endemic threatened and endangered species. The Bay is a critical stopover for hundreds of thousands of birds on the Pacific Flyway and hosts more wintering shorebirds than any other estuary on the west coast outside of Alaska, and is recognized for protection by the California Bays and Estuaries Policy. San Francisco Bay is listed under CWA §303(d) as impaired for chlordane, DDT, dieldrin, dioxin compounds (including 2,3,7,8-TCDD), furan compounds, invasive species, mercury, PCB's, PCB's(dioxin-like), selenium, and trash.

### **3. The Person or Persons Responsible for the Alleged Violation**

The entity responsible for the alleged violations identified in this Notice is Vallejo Flood & Wastewater District and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.



#### **4. The Location of the Alleged Violation**

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the District which relate to its ownership and operation of the Facility and associated sewer collection system, as further described in this Notice.

The District's sewer collection system encompasses approximately 425 miles of main lines, 36 pump stations, and approximately 165 miles of lower laterals. Pipe sizes range from 3 to 54 inches in diameter. The District completed significant capital improvement projects to the collection system in 2005/2006 to eliminate SSOs from 2 constructed wet weather overflow structures - the Sears Point Pump Station Overflow and the Ryder Street Overflow. These improvements included installation of a 3.0 MG underground storage tank to eliminate SSOs from the Sears Point Pump Station, and an 8.6 MG storage basin adjacent to the Facility to eliminate SSOs from the Ryder Street Pump Station. The District operates the storage basin, when possible, in a manner similar to an equalization basin to reduce discharges of blended effluent from the Facility. However, its primary purpose is to reduce and eliminate SSOs.

The Facility, located at 450 Ryder Street in Vallejo, provides secondary treatment of domestic and commercial wastewater for Vallejo, the former Mare Island Naval Facility, and an adjacent unincorporated area, and currently serves a population of approximately 120,000.

Treatment consists of screening, aerated grit removal, primary sedimentation by circular and rectangular clarifiers, biological treatment by trickling filters followed by activated sludge aeration basins, secondary clarification, disinfection by chlorination, and dechlorination by sodium bisulfite. An ultraviolet light disinfection system has been decommissioned by the District and no longer operates. Biosolids are treated by gravity thickening or co-settling, lime stabilization, and dewatering by belt-filter presses. Stabilized, dewatered biosolids are hauled off site for land application at the Biosolids Utilization Project on Tubbs Island where they are temporarily stockpiled and subsequently spread and incorporated into the soil as a soil amendment on land used for agricultural crop production.

The average dry weather design capacity for secondary treatment is 15.5 MGD. Peak wet weather capacity for secondary treatment is 35 MGD. The Facility includes an additional 25 MGD primary treatment capacity. Peak wet weather discharge capacity is 60 MGD (through Discharge Point Nos. 001 and 002 combined). The average dry weather flow from 2012 through 2015 was 8.6 MGD. The maximum daily wet weather flow over the same period of time ranged from 13 MGD to 52 MGD. Under normal conditions the Facility discharges secondary-treated effluent to Discharge Point Nos. 001 and 002, deepwater outfalls located in Carquinez Strait and Mare Island Strait. Discharge Point No. 002 is the primary outfall. During wet weather, the Facility provides full secondary treatment up to 35 MGD and primary treatment of flows from 35 MGD to 60 MGD.

Primary-treated effluent is blended with secondary-treated effluent before being discharged to Carquinez Strait via Discharge Point No. 001. By means of automated flow splitting, the Facility discharges only secondary-treated effluent to Mare Island Strait via Discharge Point No.002 to minimize potential receiving water impacts.

**5. Reasonable Range of Dates During Which the Alleged Activity Occurred**

The range of dates covered by this Notice is November 1, 2015 through the present. This Notice also includes all violations of the CWA by the District which occur after the range of dates covered by this Notice up to and including the time of trial. Some violations are continuous, and therefore each day constitutes a violation.

**6. The Full Name, Address, and Telephone Number of the Person Giving Notice**

The entity giving notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California. Its mailing address is 290 South Main St., # 817, Sebastopol, California 95472. River Watch is dedicated to protecting, enhancing, and helping to restore the surface waters and groundwater of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to counsel identified below:

Jack Silver, Esq.  
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**RECOMMENDED REMEDIAL MEASURES**

River Watch looks forward to meeting with the District's staff to tailor remedial measures to the specific operation of the Facility and associated sewer collection system. In advance of that conversation, River Watch identifies the following set of general remedial categories that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns:

1. A full condition assessment of the sewer collection system including setting timelines for repairing or replacing significantly defective assets including sewer lines, manholes and pump/lift stations.
2. Mitigation the effects of SSOs.
3. Adequate public and worker safety including protocols to minimize exposure to infectious vectors.
4. Elimination of the use of chemical root control.
5. A Supplemental Environmental Project ("SEP") in lieu of penalties.

## CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected community and may use the affected watershed for recreation, fishing, hiking, photography or nature walks. Their health, use and enjoyment of this natural resource is specifically impaired by the District's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), 33 U.S.C. § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$55,800.00 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the District to contact counsel for River Watch within **20 days** after receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



Jack Silver

JS:lm

**Service List**

Andrew Wheeler, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code 1101A  
Washington, D.C. 20460

✓ John Busterud, Regional Administrator  
U.S. Environmental Protection Agency  
Pacific Southwest, Region 9  
75 Hawthorne Street  
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Eileen Sobeck, Executive Director  
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# Law Office of Jack Silver

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*Via Certified Mail -  
Return Receipt Requested*

November 11, 2020

Dean Soiland, Owner  
Damon Weatherly, Facility Manager  
Bo Dean Co., Inc.  
Blue Rock Quarry  
7888 Highway 116  
Forestville, CA 95436

Dean Soiland, Owner  
Belinda Soiland, Registered Agent  
Head of Agency  
Bo Dean Co., Inc.  
1060 N Dutton Avenue  
Santa Rosa, CA 95401-5011

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)**

Dear Mr. Soiland, Mr. Weatherly, Ms. Soiland, and Head of Agency,

## **NOTICE OF ALLEGED VIOLATIONS**

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, ("CWA" or "the Act") that River Watch alleges are occurring at Blue Rock Quarry, owned and operated by Bo Dean Co., Inc. ("Facility") located at 7888 Highway 116, in Forestville, California. Notice is being sent to you as the responsible owners, operators, lessees and/or managers of the Facility and site. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Facility to Green Valley Creek, a tributary of the Russian River, a navigable water of the United States impaired under CWA § 303(d) for sediment and temperature entirely, and pathogens in certain areas.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System ("NPDES") permit

or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p). CWA § 402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm water discharges under the NPDES permitting program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board (“SWRCB”) to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the “General Permit”) and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). To discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and are in compliance with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred and continue to occur at the Facility. Consequently Bo Dean Co., Inc. and Blue Rock Quarry (collectively, the “Discharger”) is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the California Toxics Rule (“CTR”) and the North Coast Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

**1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated**

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of NPDES Permit No. CAS000001, (the General Permit) relating to operations taking place at the Facility including storm water disposal operations.

The SWRCB’s Stormwater Multiple Application and Report Tracking System (“SMARTS”) reporting database provides documentation that the Discharger, rather than seeking coverage under an individual NPDES permit, filed a Notice of Intent (“NOI”) agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI on November 12, 1998, and the Facility was assigned Waste Discharger Identification (“WDID”) number 149I014736.

River Watch, on the basis of eye-witness reports, records publicly available, and/or records in the possession and control of the Discharger, contends that in the continuing hard rock mining and quarrying operations taking place at the Facility, the Discharger has failed and is failing to comply with the strict terms and conditions of the General Permit governing storm water discharges.

In addition to the alleged violations of the terms and conditions of the General Permit, River Watch alleges violations of discharge prohibitions contained in the RWQCB's Basin Plan, which are incorporated by reference as part of the compliance obligations imposed on the Facility under the General Permit.

## **2. The Activity Alleged to Constitute a Violation.**

Full compliance with the mandates of the General Permit is not a mere statutory and regulatory exercise. The lands in and surrounding the Russian River Watershed produce a harvest of unparalleled bounty drawing acclaim worldwide. Failing to care for this critical environment as alleged in this Notice is a violation not only of law, but an abrogation of the trust we demand of Sonoma County landowners.

Having agreed to its terms, the Discharger has a continuing burden to demonstrate compliance with each applicable provision of the General Permit. River Watch alleges the following actions and inactions as violations of the General Permit:

### **A. Failure to Monitor Discharges from Wastewater Ponds and Implement Effective Erosion Control**

The Facility's Industrial Processes include the use and operation of wastewater ponds. Settling ponds and structures are employed as Best Management Practices ("BMPs") in drainage areas DA-1 and DA-2. (October 11, 2018, Storm Water Pollution Prevention Plan "SWPPP," Table 1.) River Watch contends it is highly likely that storm water overflows from the ponds prior to adequate time for sedimentation.

River Watch contends that the BMPs for the Facility as set out in SWPPP Sections 6.0 ("*Minimum BMPs*") and 7.0 ("*Advanced BMPs*") are not detailed sufficiently to determine whether the ponds are lined or unlined, and whether they are sufficient to hold all regulated storm water prior to evaporation or reuse. The Facility's "*Erosion and Sediment Controls*" identified in Section 6.0 of the SWPPP are not detailed sufficiently to determine whether the natural and manmade slopes, process areas, open areas, and dirt and gravel roadways within the Facility are constructed and maintained to properly control storm water discharges from the Facility.

### **B. Failure to Properly Sample and Monitor Storm Water Discharges**

General Permit III.C. Provides:

"Industrial storm water discharges and authorized NSWDS that contain pollutants that cause or threaten to cause pollution, contamination, or nuisance as defined in

section 13050 of the Water Code, are prohibited.” Water Code § 13050(e) provides, “Waters of the state” means any surface water or groundwater, including saline waters, within the boundaries of the state”.

Absent any evidence that the settling ponds located in Drainage Areas 1 and 2 are lined, River Watch contends it is highly likely that sediment-laden storm water percolates into the groundwater beneath the Facility with significant adverse effects. The Facility is bounded to the north by an unnamed creek which is a tributary to Green Valley Creek, a tributary of the Russian River. (SWPPP, p.4, Table C.) It is highly likely that the contaminated groundwater is hydrologically connected to the unnamed creek immediately bordering the site so that the Facility is discharging pollutants to the unnamed creek via hydrologically connected groundwater.

General Permit Section III.D. Provides:

“Discharges that violate any discharge prohibitions contained in applicable Regional Water Board Water Quality Control Plans (Basin Plans), or statewide water quality control plans and policies are prohibited.

The Basin Plan states:

“Waters designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the limits specified in California Code of Regulations, Title 22, Chapter 15, Division 4, Article 4, Section 64435 (Tables 2 and 3), and Section 64444.5 (Table 5), and listed in Table 3-2 of this Plan.” (Basin Plan p. 3-5.)

All groundwater in the North Coast Region is designated as a potential source of municipal water supply. Widely recognized metals of concern in gravel and sand include iron, aluminum cobalt, chromium, copper, nickel, lead, zinc and arsenic. All of these constituents have concentration limits as designated in Table 3-2 of the Basin Plan. River Watch contends the Discharger is required to periodically test ground water beneath the Facility site for these recognized constituents of concern associated with rock quarry operations.

The General Permit requires the Discharger to ensure that industrial storm water discharges do not: (a) cause or contribute to an exceedance of any applicable water quality standards in the Russian River including its tributaries (General Permit Section I.E.37, VI.A.); (b) adversely affect human health or the environment (General Permit Section VI.B.); and, (c) do not contain pollutants in quantities that threaten to cause pollution or a public nuisance (General Permit Section III.C). The Discharger provides no evidence of complete compliance with these requirements for the Facility’s transportation-related areas.

The Facility employs a variety of conveyor systems for handling raw and processed materials. Materials are also moved by heavy equipment (particularly in the Active Mining Area and by smaller loaders in the Materials Processing Area. (SWPPP Table D, p.6.) Numerous references are found in the SWPPP for truck activity, loader buckets, and truck beds – all identified as potential pollution sources. (SWPPP Table 4.) Although the Discharger identifies these transportation activities taking place at the Facility, it fails to test storm water discharges for copper or zinc which are known pollutants from tires, brake pads, fuels, and lubricants.



C. Failure to Prepare and Implement an Adequate SWPPP

The General Permit requires the preparation, implementation, review, and update of an adequate SWPPP which must comply with the standards of Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”).

The General Permit requires dischargers to implement BMPs when necessary to support attainment of water quality standards. The use of BMPs to control or abate the discharge of pollutants is authorized by 40 C.F.R. §122.44(k)(3) because numeric effluent limitations are infeasible, and implementation of BMPs is reasonably necessary to achieve effluent limitations and water quality standards, and to carry out the purposes and intent of the Act. (40 C.F.R. §122.44(k)(4).)

Compliance with the monitoring and reporting program and the requirement to implement effective BMPs is central to an efficacious General Permit program. The General Permit has required all non-exempt facilities to collect and accurately analyze samples from storm events, and implement effective BMPs detailed in the facilities’ SWPPPs that are adequate in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges.

Discharges from the Facility contain sediment which adversely affects Green Valley Creek, tributary to the Russian River. River Watch, following review of documents on file with the SMARTS reporting database, contends the Discharger has not fully developed and/or adequately implemented a SWPPP for operations at the Facility as evidenced by the fact that the Discharger has failed to reduce pollutants in storm water to below water quality objectives or standards. A review of the Discharger’s Self-Monitoring Reports demonstrates discharges are occurring from the Facility site to an unnamed tributary to Green Valley Creek exceeding EPA benchmarks and Numeric Action Limits for sediment. The Facility’s Annual Average for Sediment concentration in its stormwater discharges, measured as Total Suspended Solids (TSS) for the reporting period 2019-20 was 144 mg/L (*see* Level 2 Exceedance Response Action Plan, December 26, 2019, App.2). The General Permit Numeric Action Limit (NAL) is 100 mg/L. The exceedance of the NAL indicates a failure on the part of the Discharger to implement adequate BMPs.

The Discharger has been and will continue to be in violation of the Act every day it discharges storm water containing pollutants as identified in this Notice from the Facility without adequately implementing its SWPPP and the BMPs required to be incorporated in that SWPPP.

Storm water on the Facility site comes in contact with sediment disturbed during hard rock mining and quarrying operations which cause storm water to be polluted by the sediment. The majority of operations at the Facility are exposed to the atmosphere, including mining, reclamation, shipping/receiving, material storage and handling operations. (SWPPP, p.5.) Directly exposed materials are present at the Material Processing Area and the Active Mining Area at the Facility. In addition, portions of the Facility and access roads on the Facility are located in dirt/gravel areas. (SWPPP Table D, p.6.)

**3. The Person or Persons Responsible for the Alleged Violation**

The entity responsible for the alleged violations identified in this Notice is Bo Dean Co. Inc., as owner and operator of Blue Rock Quarry, as well as those of its employees responsible for compliance with the General Permit.

**4. The Location of the Alleged Violation**

The location of the various violations of the CWA is the permanent address of the Facility at 7888 Highway 116, Forestville, California, and including the waters of Green Valley Creek, a tributary of the Russian River - a navigable water of the United States. The Facility is located in an unincorporated area of Western Sonoma County, comprised of some 54+ acres, consisting of multiple parcels identified as Sonoma County Assessor's Parcel Numbers 084-220-007, 084-220-009, 084-220-010, 084-220-013, 04-220-015, 084-220-017, 084-220-018, and 084-220-019.

**5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred**

The range of dates covered by this Notice is November 1, 2015 through the present. This Notice includes all violations which occur after the range of dates covered by this Notice up to the end of trial. Some of the violations are continuous in nature, and therefore each day constitutes a violation.

**6. The Full Name, Address, and Telephone Number of the Person Giving Notice**

The entity giving this Notice is California River Watch, an Internal Revenue Code §501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 S. Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to the undersigned.

**REMEDIAL MEASURES REQUESTED**

River Watch believes that at a minimum, implementing the requirements of the General Permit as outlined in this Notice is necessary in order to bring the Facility into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment.

## CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, fishing, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

The General Permit, in the very first "Standard Condition," states that "Dischargers shall comply with all standard conditions in this General Permit. Permit noncompliance constitutes a violation of the Clean Water Act and the [California] Water Code and is grounds for enforcement action and/or removal from General Permit coverage" (General Permit Section XXI.A). The gravity of ensuring that the Annual Reports submitted to the State of California are complete and accurate is highlighted by the General Permit requirement that the person signing and certifying the document certifies that "to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations" (General Permit Section XXI.L).

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$55,800.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch encourages the Discharger to contact counsel for River Watch within **20 days** after receipt of this Notice to continue on-going discussions regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Facility is in compliance with the strict terms and conditions of the General Permit, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jack Silver", written in dark ink.

Jack Silver

**Service List**

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